

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 87990-001-SF

v

Blue Cross and Blue Shield of Michigan
Respondent

_____/_____
Issued and entered
this 24th day of March 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On February 21, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under Public Act No. 495 of 2006 (Act 495), MCL 550.1951 *et seq.* The Commissioner reviewed the request and accepted it for external review on February 28, 2008.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner notified Blue Cross and Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on March 10, 2008.

The Petitioner is enrolled for health coverage through the Michigan Public School Employees Retirement System (MPERS), a self-funded group. BCBSM administers the plan.

The issue in this external review can be decided by a contractual analysis. The contract involved here is the MPSERS/BCBSM *Your Benefit Guide* (the guide), the document that describes the Petitioner's coverage. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

On May 25, 2007, the Petitioner purchased binaural hearing aids. The hearing aids were purchased at XXXXX in XXXXX for a cost of \$2,890.87. BCBSM paid \$1,707.00 for the Petitioner's hearing aids.

The Petitioner appealed BCBSM's payment amount. BCBSM held a managerial-level conference on January 22, 2008, and issued a final adverse determination dated January 29, 2008.

III ISSUE

Is BCBSM required to pay an additional amount for the Petitioner's hearing aids?

IV ANALYSIS

Petitioner's Argument

Prior to purchasing his hearing aids, the Petitioner contacted BCBSM to determine his coverage. In three different calls he was told by BCBSM that as of January 1, 2007 coverage was increased and the full purchase price was included. He was also told that, while his provider of service, Costco, was not participating, he could file proof of purchase for reimbursement.

While the Petitioner realized that there may be a copayment, he felt assured that his hearing aids would be reimbursed by BCBSM. BCBSM paid \$1,707.00 for his hearing aids, not the full amount of \$2,890.87.

The Petitioner appealed the amount paid by BCBSM. Eventually he was told that since he went to a non-participating provider that BCBSM should not have paid for his hearing aids.

However, BCBSM agreed not to attempt to recall the payment.

The Petitioner argues that since three different BCBSM representatives told him that BCBSM would reimburse the full amount charged for his hearing aids that it is required to pay significantly more for this care.

BCBSM's Argument

BCBSM says that the guide clearly states that it does not pay for hearing services and supplies provided by a nonparticipating provider. The Petitioner went to a nonparticipating provider.

For that reason, his hearing aids claim should have been rejected. BCBSM erroneously paid his claim at the maximum allowable amount, however. BCBSM has agreed not to recall its payment. The Petitioner is not required to repay any money to BCBSM.

The Petitioner indicated that when he called BCBSM he was told that the hearing aids would be paid at 100%. BCBSM says it reviewed the documentation from the telephone conversations the Petitioner had with customer service and the record from these calls did not indicate that BCBSM would cover his hearing aids at 100%. The records indicate the Petitioner discussed with BCBSM (1) the frequency limitation-payable once every thirty-six month period, (2) that the Petitioner did meet his deductible and (3) that the Petitioner had hearing aid coverage.

BCBSM argues it did not mislead the Petitioner and is not required to pay any additional amount for his hearing aids.

Commissioner's Review

The guide describes how benefits are paid. It explains on page 60, "[h]earing services and supplies provided by a nonparticipating provider are not payable." Both parties agree that XXXX is a non-participating provider. Therefore, the hearing aids the Petitioner purchased at Costco are not a covered benefit. However, BCBSM erroneously paid its maximum amount of \$1,707.00 for the Petitioner's hearing aids.

The Petitioner contends that BCBSM misinformed him about his hearing aid coverage.

BCBSM disputed the Petitioner's contention and does not believe it misinformed him. However, the Commissioner cannot resolve this kind of dispute because the Patient's Right to Independent Review Act (PRIRA) lacks the hearing procedures necessary to make findings of fact based on such doctrines as detrimental reliance or estoppel. Under PRIRA, the Commissioner's role is limited to determining whether a health plan has properly administered health benefit claims under Michigan law and the terms and conditions of the applicable insurance contract.

The Commissioner finds that BCBSM is not required to pay any additional amount for the hearing aids provided the Petitioner on May 25, 2007.

**V
ORDER**

BCBSM's final adverse determination of January 29, 2008, is upheld. BCBSM is not required to pay an additional amount for the Petitioner's hearing aids.

This is a final decision of an administrative agency. A person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. See MCL 550.1915(1), made applicable by MCL 550.1952(2).

A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.